

TECHNICAL ASSISTANCE - CHAPTER 7 – SEPARATION

Prepared by Division of Human Resources in the Department of Personnel & Administration and the State Personnel Board in October 2003.

PRE-SEPARATION EXCHANGE OF INFORMATION

An appointing authority must exchange information with any permanent (see below) employee before the employee is separated from state service. This requirement applies to any involuntary separation, e.g., layoff, discharge for exhaustion of leave, job abandonment. This information exchange can occur during a meeting or may be accomplished by telephone or mail. The purpose of the exchange of information is to allow the employee to present information before being separated from state employment. A meeting with several employees may be held at the same time or individual discussions may be scheduled. Probationary employees may also be entitled to a pre-separation exchange of information.

Additional information regarding exchange of information in a layoff situation may be found in *University of Southern Colorado v. State Personnel Board*, 759 P.2d 865 (Colo. App. 1988), a case involving the appeal of state certified employees whose positions were abolished because of a reorganization. A meeting to discuss the university's decision to reorganize and layoff affected employees was not held prior to providing the employees with notice of layoff. The employees challenged this procedure and were upheld by the Court of Appeals.

RESIGNATION

Considered to Have Resigned

There have been a number of administrative law judge decisions addressing the "deemed to have resigned" (absence without approved leave) provisions. These decisions clarify that this rule is intended for a job abandonment situation and does not apply when the appointing authority has knowledge of the employee's whereabouts and the reason for the leave. The rule is designed for a relatively rare circumstance when all the facts and circumstances of the situation indicate the employee's abandonment of the job. The rule does not apply to those cases where the appointing authority has actual or constructive knowledge of the whereabouts of an absent employee and the predisposing valid reason, medical or otherwise, the employee has not appeared for duty. A prudent administrator would not determine that an employee has abandoned the job when the appointing authority knows or, in the exercise of reasonable care, ought to know that this is not the case. Appointing authorities should keep records of all attempted contacts with employees when dealing with a job abandonment situation in the event of a future appeal.

LAYOFF

Reasons for Layoff

The reasons for layoff are lack of work, lack of funds, or reorganization. Once a department identifies one of these reasons as the basis for layoff, the department is bound by the identified reason throughout the layoff process.

- When the reason for layoff is reorganization, a business plan must be posted in a conspicuous place before the first layoff notice is issued. The contents of a business plan are listed in Board rule.

The appointing authority is responsible for determining which positions will be abolished as part of the layoff process.

When a position is allocated downward, an employee who elects not to accept the downward movement is processed under the layoff provisions. If an employee does not qualify or is not selected for the position that has been moved up, the employee is processed under the layoff provisions.

When an employee fails to perform satisfactorily at any time during the 6-month trial service period, the appointing authority has two choices. The appointing authority may choose to use corrective or disciplinary action, or reversion. If reversion is selected, the employee is reverted to a vacancy in the previously certified class within the department and does not have the right to a hearing. If no vacancies exist, the employee is processed under the lay off provisions, including a reemployment list and appeal rights.

Employee Status and Early Certification

Law sets the time limit for probationary status with an employee accruing all rights of certified employees upon completion of the probationary period. The constitution states that probationary status cannot exceed 12 months from date of hire (except for periods of unpaid leave under Chapter 5). Layoff does not extend the time or stop the clock. Because it is possible for a probationary period to expire during a layoff, the type of notice and determination of retention rights should be based on the effective date of the *layoff* - not the date of the notice. If a probationary employee becomes certified prior to the effective date of layoff or during the retention-processing period, rights should be processed as if the employee is certified. For example, if an employee is probationary at the time of notice but will become certified within 10 days, a 45-day notice should be issued. If the employee to be displaced is probationary at the time of notice but will become certified prior to actual displacement, ensure the employee is given all the rights afforded under certified status.

The rules do not prohibit a department from granting certified status to some or all probationary employees prior to or during the layoff process. However, some departments have specific policies prohibiting early certification and to change these policies during a layoff would be questionable practice.

Documentation

In order to process a layoff, the department will need the following information:

- the employee's name, home address, any military service, and continuous state service;
- the employee's present class, position number, pay grade, and base salary;
- previous classes in which the employee held certified status;
- a current application from the employee;
- all jobs offered to the employee;
- the employee's previous performance evaluations;
- the employee's final average performance rating that was used for the layoff;
- the employee's ranking on factors other than performance if other factors were used in a layoff matrix;
- list of and documentation on positions to which the employee might have been referred that were not offered because the employee did not meet the minimum or special qualifications;
- documentation of all notification given to the employee and the employee's response to retention offers;
- employee roster or organizational chart ("snap shot" of employees and positions in the retention area at the time); and,
- similar information for employees affected, or possibly affected, by the layoff (e.g., application, performance ratings, military time, matrix score).

Appeals and Grievances

Departments must notify employees in writing of their rights to appeal layoff actions that adversely affect current base pay, status, or tenure. Departments are not required to notify employees in writing that they have the right to grieve aspects of the layoff process that do not adversely affect current base pay, status, or tenure. For example, a department does not have to notify an employee of grievance rights if an employee is offered a position in the same class with different working hours than the current position. However, if a grievance is filed, the department must process the grievance.

Probationary employees have the same rights to appeal or grieve layoff actions as certified employees. As of July 1, 2003, Senior Executive Service (SES) employees involved in a layoff do not have retention and reemployment rights but do have a right to appeal a layoff. SES employees do have a right to the appropriate notice of layoff.

Leave

An employee who is on leave-without-pay or on extended paid leave, including Family/Medical Leave or Short-Term Disability Leave, is processed under the layoff provisions in the same manner as other employees.

A certified employee who is on leave must be offered applicable opportunities in the layoff process. The employee is placed in the new position and remains on leave if unable to return to work.

Insurance and PERA Information

Employees who are laid off or who are off payroll while they are waiting for their layoff rights to be processed (occasionally occurs in large-scale layoffs when there is not sufficient time to process all employees' retention rights during the notice period) may be eligible for unemployment insurance benefits. Information concerning these benefits may be obtained from the Unemployment Insurance Division in the Department of Labor and Employment.

Laid off employees are permitted to retain state group health and dental insurance coverage under COBRA provisions. The employee must pay both the employee's and the state's share of the premium plus an additional administrative fee. Laid off employees are ineligible to continue group life insurance coverage. However, the employee may arrange to convert the state's policy to a private policy. Additional information concerning health and life insurance benefits may be obtained from the department's human resources office or the Division of Human Resources in the Department of Personnel and Administration.

Laid off employees should contact the Public Employees Retirement Association for information concerning benefits and refunds. PERA may be reached at 1300 Logan Street, Denver, Colorado 80203. The telephone number is 303-832-9550.

Moving Expenses

Information about moving expenses may be found in Section 24-50-134 of the Colorado Revised Statutes and in the State Fiscal Rules. An employee is entitled to moving expenses if the employee accepts a retention opportunity as part of the layoff process.

Part-Time Employees

In offering retention rights, full-time employees are referred first to full-time positions.¹ If there are no full-time positions to which an employee has retention rights, part-time positions are offered. Part-time employees whose positions are abolished or whose hours are increased to full-time (see discussion below) are referred first to part-time positions and then to full-time positions if there are no part-time positions to which the employee has retention rights.

A part-time employee whose position is increased to full time has the right to be processed under the layoff provisions. A part-time employee whose hours are reduced or increased but whose position remains part time (e.g., hours are increased from 50% to 75% or decreased from 75% to 50%) does not have retention or reemployment rights. However, the employee may grieve the change in hours.

The name of a full-time employee who accepts a part-time position, or a part-time employee who accepts a full-time position, is placed on a reemployment list.

¹ A full-time employee is an employee who is in a position regularly scheduled to work 40 hours per week or the equivalent. This equates to 2,080 hours or the equivalent amount of time (e.g., 2,088 hours for a leap year) for a full year. A part-time employee is an employee who does not meet this definition of full-time.

Notice

Certified employees must be given at least 45 days' notice of position abolishment. The notice must direct the employee to indicate, in writing, whether she or he wishes to exercise retention rights within three working days from the date of delivery. If the notice is sent by certified mail, it is deemed delivered when it is received or five days after the certified mailing, whichever is first.

An employee who fails to respond to a retention offer within the three working days, will be laid off and have his or her name placed on a reemployment list.

Non-certified employees who are affected by layoff and certified employees who are displaced by other employees are entitled to 10 working days' notice before displacement or separation.

- A certified employee who is separated as a result of being displaced is paid for at least 22 working days after receipt of notice of displacement, including the 10-day notice period.
- The names of probationary employees separated due to layoff are not placed on a reemployment list, are not restored to eligible lists, and are not eligible for reinstatement. Probationary employees who are laid off and subsequently rehired do not receive credit for previous state service for restoration of sick leave, earning of annual leave, or any other purpose.

Trial service employees are treated in the same manner as certified employees. They are considered certified in the current class throughout the layoff process, which includes placement on a reemployment list.

Retention Area

If a department determines that, based on business needs, an anticipated layoff should be limited to a specific division of a department, it must submit a request for such approval to the Personnel Board, which must be approved before the layoff begins (notice is issued). For more information on the Board's request process, refer to technical assistance on the web at www.colorado.gov/dpa/dhr.

Time Bands

Time bands are based on seniority. A band represents three whole calendar years, beginning with the year in which the layoff is occurring, e.g., 2000 – 2002. Because of Constitutional provisions, veterans within a time band should be the last employees to be displaced in a layoff situation.

Seniority

There is no distinction made between part-time service and full-time service for purposes of determining seniority. Seniority is based on continuous state service, including any break in service of 90 days or less that occurred after January 1, 1986 for certified employees. Any break in service prior to January 1, 1986, causes a break in an employee's seniority for layoff. Seniority also includes approved paid and unpaid leave and time spent on a reemployment list or while waiting for

retention rights. Please remember that an employee receives seniority credit for exempt state employment if the employee enters the state personnel system without a break in service. For example, an employee who enters the state personnel system from an exempt position with the Governor's Office without a break in service would receive seniority credit for the period of non-classified employment with the Governor. Refer to *Technical Assistance - Bringing Employees Or Positions Into The State Personnel System* for additional information, including instructional staff from higher education. Seniority credit is not awarded to employees who previously worked as students while attending a college or university. As of December 31, 1998, temporaries who are appointed to permanent positions without a break in service also receive no credit for the time in the temporary position. Reinstated employees do not retain previous seniority if the break in service is more than 90 days. PERA service credit has no impact on seniority.

An employee who meets the requirements for veteran's preference receives credit for military service for seniority purposes. Although military time is rounded to the next whole year for partial years, this time should not be rounded if the result of rounding causes the employee's military time to exceed 10 years. For example, an employee with 10 years, 11 months and 2 days military service can only receive credit for 10 years. In order to receive credit for military service, an employee must meet the requirements for veteran's preference credit and must have been discharged from the military under honorable conditions. Veterans who served 20 years or longer are not eligible for military service credit. An employee who is the un-remarried spouse of a deceased veteran when originally hired or who becomes a widow(er) during state employment is also eligible for credit for the spouse's honorable military service but loses this credit upon remarriage. This is true even if the remarriage ends in divorce or death. The widow(er) is never entitled to more credit for military service than that credited to the spouse. Also, a widow(er) of a veteran who is also a veteran cannot combine both the spouse's and the employee's military service. The employee's complete file should be reviewed to determine if veteran's credit is applicable. Documentation may need to be obtained to determine eligibility. For additional information on veteran's preference itself, refer to "Treatment of Veterans and Active Military" on the web at www.colorado.gov/dpa/dhr.

Matrix

Each department must establish a matrix for ranking employees within a three-year band. The matrix must be communicated to employees at least 15 calendar days before the first layoff notice is issued. To avoid the appearance of manipulating the layoff process to benefit certain employees, department are encouraged to establish a matrix so it is ready in the event that it becomes necessary to apply it to a layoff situation. An employee with the lowest ranking must be displaced first, except non-veterans must be displaced before veterans in the time band.

It is not necessary to rank veterans under a matrix if there are sufficient non-veterans in the band to accommodate the reduction. If there is more than one veteran in a band and a veteran will be affected by layoff, the veterans must be ranked using the matrix to determine which veteran will be displaced. This also applies to un-remarried widows(ers) of veterans.

Performance must count at least 51% in the matrix. The average of the final overall ratings for the latest three years are used for purposes of the matrix. For example, a final overall rating of unsatisfactory is used even if the employee subsequently improves. The final overall rating is the

yearly rating that the employee receives according to the department's established annual performance cycle. If a rating is missing, the employee's performance rating for the missing year is considered satisfactory. It is suggested that only final overall ratings currently in the official personnel file as of the date of the first layoff notice be used for layoff purposes in order to avoid the perception of manipulation of the layoff process.

Prior to July 1, 2002, there were three performance levels and prior to July 2, 1998 there were five performance levels. The performance pay system currently uses four performance levels. Each performance level within a given performance system (i.e., PACE, CPP) must be converted in a department's matrix to the current four-level rating scale.

Other factors, in addition to performance, that a department may wish to include in a matrix are:

- business necessity (job fit, job suitability, versatility, how recent the experience or skill);
- diversity; or,
- elimination of funding if the abolished position was funded by a limited term grant.

Departments have discretion to determine what action will be taken if ties occur as a result of application of a matrix. Some possible suggestions are:

- actual final overall ratings;
- actual seniority; or,
- best fit/business necessity determinations.

Order of Retention Opportunities

An employee does not have the right to be offered vacant higher-level positions if the employee was certified at a higher level and demoted for non-disciplinary reasons.

Appointing authorities may determine which provisional, probationary, or conditional employee will be displaced when there is more than one employee in these status groups. A vacant position should always be offered before a position held by a non-certified employee. A reinstated employee should be offered retention rights to all classes in which the employee held certified status regardless of any break in service.

An employee must meet minimum and any special qualifications that are attached to a position in order to be offered the position. Special qualifications should be consistent within the department for positions performing essentially the same duties and having the same requirements. Applications should be requested from employees and screened against minimum and special qualifications contained in announcements or updated official PDQs. All special qualifications should be reviewed and approved by the department's human resource office prior to being attached to a position. Special qualifications must be defensible as bona fide (e.g., special programming language for a computer programmer, member of a particular religion for a chaplain). Qualifications can be appealed to the Board if their attachment to a position causes an employee to experience a loss in current base pay, status, or tenure in the layoff process. Departments are cautioned against changing minimum and special qualifications after a layoff is in process.

Pay

An appointing authority has discretion to preserve an employee's current pay, not to exceed the maximum of the range. Saved pay above the maximum of the new range does not apply. However, if the employee moves to a position in the same class or a class in the same pay grade, the current base pay cannot be reduced unless the employee volunteers to accept less (refer to lateral movement in Chapter 3).

Within/Outside 50 Miles

If the highest-level opportunity is within 50 miles, only that position is offered. If the highest-level opportunity is outside 50 miles, the employee is offered that position and the highest-level demotion within 50 miles. The Personnel Board determined in a decision that the 50-mile radius is defined as air mileage. Although this decision is not binding, it may be persuasive in future appeals.

Reemployment Lists

Names on a reemployment list are not ranked according to seniority. All names are referred to the appointing authority and the appointing authority has discretion to select which individual to reemploy. There is no provision for extending the life of a reemployment list beyond one year.

Voluntary Separation Incentives

This program allows departments to offer monetary incentives to employees who voluntarily terminate state employment as an alternative to a layoff. Employees retain the privilege of reinstatement and may apply for other state jobs but waive retention and reemployment rights. The program is **not** intended to be an early retirement program. For more information on separation incentives, refer to technical assistance on the web at www.colorado.gov/dpa/dhr.

Outplacement Assistance

State employees who have been laid off or have received a notice that they will be laid off from state employment can receive *free assistance* through the Colorado Department of Labor and Employment (DOLE). The Rapid Response Team in DOLE provides a variety of outplacement services to dislocated workers and departments. The following illustrates some of these services.

- One-on-One career counseling that includes career assessment and testing and assistance in developing an employment plan. The employment plan helps in evaluating skills and abilities and determining what course of action to take after being laid off.
- Assistance in transitioning current skills into a new career.
- Job placement services, automated job matching for statewide and national job listings, job search workshops and labor market information.

- Assistance in marketing current skills in today's job market and resume preparation.
- Skills upgrade training or tutorials in basic computer skills such as Word, Access, and Excel.
- Assistance with unemployment insurance, pension benefits and health insurance coverage, and stress and financial management.

For further assistance, contact the DOLE at <http://www.coworkforce.com/EMP/Layoffassistance.asp> (note: read past the National Emergency Grant information and go to the Rapid Response Team information).

Additional Information

An employee who is separated and later reemployed is required to pay Medicare tax. In a case filed with the Personnel Board, the decision clarified that laid-off employees who are subsequently reemployed are considered new employees for Medicare tax purposes. "A layoff constitutes a termination of the employment relationship for Medicare tax purposes." (Case 878-B-61)

TRANSFER OF FUNCTIONS AND TENURE RIGHTS

There are situations where one department eliminates a function and another takes it over. The receiving department may create the same or a reduced number of positions and the issue is what rights the affected certified employees have to these new positions. While the employees can exercise retention rights within the original department, they do not have such rights to the positions that are created in the new department. The courts have determined that these certified employees have "tenure" rights when the new positions involve substantially similar duties. Tenure rights are broader than retention rights because they are based in the Colorado Constitution, and because they exist in other departments.

Under the Colorado Constitution, employees have a right to hold their positions "during efficient service or until reaching retirement age...." In *People ex rel. Kelly v. Milliken* (1923), the Court held that the former employees were entitled to be rehired stating, "Since their tenure of office is secured to them the Constitution...the Legislature has no power to deprive them of it. That body has, indeed, the power to abolish the office, but it may not avoid the Constitution by abolishing the office and creating a new one with duties substantially the same..." In the more recent *Bardsley v. Dep't of Public Safety* (1994), the Court stated, "neither the executive branch or the legislature can deny to certified state employees the tenure rights granted to them...Hence, a certified position may not be abolished and the incumbent employee terminated if a new position is created with substantially the same duties and responsibilities as the old position, but filled by another employee.... [T]he rights granted by the Civil Service Amendment to a certified state employee include the right not to be displaced by the abolition of the position occupied and the creation of a new position which is required to perform *substantially* the same service."

Tenure rights include consideration of seniority, which is included in the Board's definition of tenure, as well as other factors identified in law and rule such as qualifications and performance. When a function is transferred from one department to another, *Bardsley* requires the receiving

department to transfer the employees to the new positions with substantially similar assignments to their former positions. The issue becomes more complex when there are fewer positions than potential transfers. There is nothing that prevents the receiving department from running an application process where those being laid off due to elimination or transfer of the function receive a notice containing information on the new positions, their qualifications, and a clear statement that employees will not be considered if they do not apply for the new positions. At this point, the receiving department should obtain the personnel files from the other department to use in the hiring process. The first consideration is the similarity of duties, which is more than just the class title. The department should then determine if the employees meet the minimum qualifications specified in the new position description questionnaire (PDQ) or any announcement. Finally, the department should consider seniority followed by performance evaluations. The receiving department's retention matrix can even be applied to assist in hiring decisions. The preservation of tenure rights for certified employees affected by the transfer of functions between departments is similar to administering retention rights during a layoff.

LEGAL DECISIONS

Definition of Arbitrary and Capricious

The Colorado Supreme Court has defined arbitrary and capricious as:

“Capricious or arbitrary exercise of discretion by an administrative board can arise in only three ways, namely: (a) by neglecting or refusing to use reasonable diligence and care to procure such evidence as it is by law authorized to consider in exercising the discretion vested in it; (b) by failing to give candid and honest consideration of the evidence before it on which it is authorized to act in exercising its discretion; (c) by exercising its discretion in such manner after a consideration of evidence before it as clearly to indicate that its action is based on conclusions from the evidence such that reasonable men fairly and honestly considering the evidence must reach contrary conclusions.”

Extension of Deadlines Based on Inadequate Notice (*Cunningham v. Department of Highways*, 823 P.2d 1377 (Colo. App. 1991))

“If a state employee is not given notice of his right to pursue a claim of discrimination, and he has no actual knowledge of the procedure involved, then the statutory 10-day limitation period will start to run only after he receives notice thereof.”

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to Chapter 7 of the Personnel Board Rules or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

SAMPLE LETTER

(Notice of pre-separation meeting for exhaustion of leave.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS}

Dear [name of employee]:

A review of leave records indicates that your sick and annual leave will be exhausted on [date] and that your Family/Medical leave will be exhausted on [date]. Additionally, your Short-Term Disability leave will be exhausted on [date]. The [most recent] medical certificate [date of medical certificate] stated an anticipated return of [date].

Director's Administrative Procedure P-5-10 allows an appointing authority to either grant leave-without-pay or to administratively discharge an employee who has exhausted all paid leave and is unable to return to work. Prior to making a decision, I would like to meet with you to discuss the situation. I have scheduled a meeting for [date/time]. The meeting will be held at [location]. Please call to confirm your attendance. I can be reached at [phone number]. If you are unable to meet at the scheduled time, we can reschedule a time to discuss your situation by phone.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER
(Termination for exhaustion of leave.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

After considering all of the information that you provided during our meeting of [date of meeting or reference phone discussion if applicable], I have decided to administratively discharge you effective [date] pursuant to Director's Administrative Procedure P-5-10. This procedure allows an appointing authority to either grant leave-without-pay or to administratively discharge an employee who has exhausted all paid leave and is unable to return to work after Family/Medical leave and Short-Term Disability leave no longer apply.

As a certified employee who is administratively discharged, you are entitled to be considered for reinstatement when you have recovered and are able to return to work. At the time that you request reinstatement you will be expected to submit a fitness-to-return certificate. In addition, [name of human resource person] will provide you with information about continuation of insurance benefits under the COBRA program. You may also be eligible to continue disability benefits under PERA's Short-Term Disability program or for a disability retirement. Contact PERA at 303-832-9550.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

The 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions concerning the layoff process.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Notice of termination for unsatisfactory performance of a probationary employee.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

In accordance with State Personnel Board Rule R-7-1, on [date] at [time], we met to discuss your status as a probationary employee. You were advised that you would be terminated effective close of business [date]. As a probationary employee, you do not have a right to a pre-disciplinary meeting or a mandatory hearing to review discipline for unsatisfactory performance (R-4-10). However, you may petition the Board for a discretionary hearing on non-disciplinary matters.

The form for a petition is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The petition must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

The 10-day deadline also applies to all charges of discrimination.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Notice of layoff to a certified employee with no offer.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that your position as a [class title] is being abolished effective close of business [effective date] due to a lack of funds. This letter is your 45-day notice of position abolishment and official notification of your retention rights within the Department of XYZ.

State Personnel Board rules specify that retention opportunities be offered to a certified employee in the following order:

- the employee's current class;
- classes to which the employee was previously certified that have the same range maximum as the current class;
- the highest level demotional opportunity in the employee's current or previously certified class series.

There are no vacant or occupied positions in your current class series. Because you have not been certified in any other classes, you do not have retention rights to positions in other class series.

Effective close of business on [effective date], you will be laid off and your name will be placed on a [class title] reemployment list for maximum of one year unless you are reemployed in a position in your current class before the one-year period expires. Please contact [name of HR person] at [phone #] for information on PERA, health insurance, COBRA, and unemployment benefits to which you may be entitled.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

This 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Forty-five day notice to certified employee with offer.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that your position as a [class title] is being abolished effective close of business on [effective date] due to a lack of work. This letter is your 45-day notice of position abolishment and official notification of retention rights within the Department of XYZ.

There is a [vacant or occupied] [class title of available position] position (position #____) to which you have retention rights.

You have three days from the date you receive this letter to notify [name of HR person] in writing if you wish to accept the above offer. [Name of HR person]'s address is [address] or you may fax your written response to [fax #]. If you do not accept the offer within three days, you will be laid off effective close of business on [effective date]. Your name will be placed on a [class title] reemployment list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Certified employee offered vacant position outside 50-mile area.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that your position as a [class title] in the Denver office is being abolished effective close of business on [effective date] due to a lack of work. This letter is your 45-day notice of position abolishment and official notification of retention rights within the Department of XYZ.

There is a vacant [class title of available position] position (position #_____) in our [location if applicable] office to which you have retention rights. There is no position within 50 miles to which you have retention rights.

You have three days from the date you receive this letter to notify [name of HR person] in writing if you wish to accept this offer. [Name of HR person]'s address is [address] or you may fax your written response to [fax #]. If you elect not accept the offer within three days, you will be laid off effective close of business on [effective date]. Your name will be placed on a [class title] reemployment list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Follow-up when employee refuses an offer or voluntarily demotes.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

On [date], you received a letter in which you were offered a [class title] position (position #) in the [work unit]. This was the position to which you had retention rights as part of the layoff process. On [date], you indicated that you did **not** wish to accept the position.

As a result, effective close of business on [date], you will be laid off and your name will be placed on a reemployment list for [class title]. The reemployment list will be within the department. Your name will remain on this list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires.

Please contact [name] at [phone number], in our Program Human Resource Office to obtain information on PERA, health insurance, COBRA, and unemployment benefits to which you may be entitled.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

The 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions concerning the layoff process.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Notice to probationary employee - 10-day notice.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that your position as a [class title] is being abolished effective close of business on [effective date] because of a lack of funds. This letter is your 10 working days' notice of position abolishment. As a probationary employee, you do not have retention rights under the layoff rules. However, you are welcome to apply for another state position for which you are qualified.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

This 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Notice to certified employee bumped from position.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that you are being displaced from your position as a [class title] effective close of business on [effective date] by an employee who is exercising retention rights. This is your 10 working days' notice of job abolishment and official notification of your retention rights. As a certified employee you are entitled to 22 days of paid salary. Enclosed is a warrant in the amount of [\$].

We have made a search for positions to which you have retention rights and have determined that no such positions exist. Therefore, you will be displaced from your position effective [date] and your name will be placed on a [class title] reemployment list. Your name will remain on this list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

This 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

SAMPLE LETTER

(Notice to certified employee bumped from position & offered lower-level position.)

DELIVERED VIA CERTIFIED AND REGULAR MAIL [HAND DELIVERED]

[DATE]

[ADDRESS]

Dear [name of employee]:

The purpose of this letter is to advise you that you are being displaced from your position as a [class title] effective close of business on [effective date] by an employee who is exercising retention rights. This is your 10 working days' notice of job abolishment and official notification of your retention rights.

We have made a search for positions to which you have retention rights and there is a [vacant or occupied] [class title of available position] position (position #____) to which you have retention rights. Therefore, you will be displaced from your current position effective on [date] and begin your new position on [date]. Your name will also be placed on a [class title] reemployment list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires. Your salary in the lower class will be [\$.....] because it cannot exceed the maximum of the new pay grade.

You have three days from the date you receive this letter to notify [name of HR person] in writing if you wish to accept the above offer. [Name of HR person]'s address is [address] or you may fax your written response to [fax #]. If you do not accept the offer within three days, you will be laid off effective close of business on [effective date]. If you elect to decline the offer your name will be placed on a [class title] reemployment list for a maximum of one year unless you are reemployed in a position in your current class before the one-year period expires. In addition, if you decline the offer, as a certified employee you are entitled to 22 days of salary.

You may file an appeal of this action under the rules of the State Personnel Board. The appeal form is available from the Human Resources Office at [address of HR office] or the web at www.state.co.us/dhr. The appeal must be in writing, signed by you or your representative, and must be postmarked, faxed, or delivered to the State Personnel Board not later than the tenth (10th) calendar day after your receipt of this letter. The address and fax number for the State Personnel Board are as follows:

State Personnel Board
Attention: Appeals Processing
1120 Lincoln Street, Suite 1420
Denver, CO 80203
303-894-2147

This 10-day deadline and the appeal procedures also apply to all charges of discrimination.

Please contact me if you have questions.

Sincerely,

[Appointing Authority]

cc: Human Resources Office

[If hand delivered, the employee is required to acknowledge receipt by signature and date.]

Sample Layoff Verification Worksheet

Employee Name: _____

Home Address: _____

Home Phone: (____) ____-____

Work Phone: (____) ____-____

Effective Date of Layoff: _____

Employee Status: _____

Service Date: _____

Military credit: Yes ___ No ___ Number of Yrs: _____

Adjusted State Service Date (including Military credit): _____

Current Job Class _____

Grade/Salary: _____

Previously Certified: _____

Job Classes _____

Annual Performance Ratings (last three years):

(Be sure all ratings use the same scale)

Average Performance Rating: _____

Additional Factors Considered in the Matrix:

Factor: _____ Rating: _____

Factor: _____ Rating: _____

Factor: _____ Rating: _____

Overall Rating: _____

Retention Rights

1. Current Certified Class:

a. Vacant positions: Yes ___ No ___

If yes, position numbers are: _____

Verify minimum (special) qualifications: Yes ___ No ___

Position Offered: _____

1. Current Certified Class: (continued)

b. Occupied Positions: Probationary Yes___ No___ Certified Yes___ No___

Position	Pos. #	Name	Status	Time Band	Matrix Score

Verify Veteran's status: Yes___ No___

Verify minimum (special) qualifications: Yes___ No___

Position Offered: _____

2. Previously Certified Class at the Same Maximum Pay Rate:

a. Vacant positions: Yes___ No___

If yes, position numbers are: _____

Verify minimum (special) qualifications: Yes___ No___

Position Offered: _____

b. Occupied Positions: Probationary Yes___ No___ Certified Yes___ No___

Position	Pos. #	Name	Status	Time Band	Matrix Score

Verify Veteran's status: Yes___ No___

Verify minimum (special) qualifications: Yes___ No___

Position Offered: _____

3. Highest Level Demotions:

a. Vacant positions: Yes___ No___

If yes, position numbers are: _____

Verify minimum (special) qualifications: Yes___ No___

Position Offered: _____

3. Highest Level Demotions: (continued)

b. Occupied Positions: Probationary Yes___ No___ Certified Yes___ No ___

Position	Pos. #	Name	Status	Time Band	Matrix Score

Verify Veteran’s status: Yes___ No ___

Verify minimum (special) qualifications: Yes ___ No ___

Position Offered: _____
